

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0379
Sales and Use Tax
For The Tax Period 2005**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax - Imposition

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC § 6-2.5-2(c)(1); IC § 6-6-6.5-8(d); 45 IAC 2.2-5-15; *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

The Taxpayer protests the assessment of use tax on an airplane.

II. Tax Administration- Ten Percent Negligence Penalty

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2(b).

The Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

The Taxpayer is a limited liability company which bought an airplane in 2005. The Indiana Department of Revenue, hereinafter referred to as the "Department," assessed Indiana use tax, interest, and penalty. The Taxpayer protested the assessment of use tax and penalty. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax -Imposition

Discussion

All tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.* Exemption statutes are to be strictly construed against the Taxpayer. *Indiana Dept. of State Revenue v. Interstate Warehousing*, 783 N.E.2d 248 (Ind. 2003).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. IC § 6-2.5-3-2(c)(1).

IC § 6-6-6.5-8(d) provides for the payment of sales or use tax on an airplane as follows:

A person shall pay the gross retail tax or use tax to the department on the earlier of:

- (1) The time the aircraft is registered; or
- (2) not later than thirty-one (31) days after the purchase date;

unless the person presents proof to the department that the gross retail tax or use tax has already been paid with respect to the purchase of the aircraft or proof that the taxes are inapplicable because of an exemption.

The Taxpayer bases its claim for exemption on the following provisions of IC § 6-2.5-5-8 (b) which state as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property. . . .

The law concerning the exemption for rental to others is further explained at 45 IAC 2.2-5-15 as follows:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
- (3) The property is resold, rented or leased in the same form in which it was purchased.

(c) Application of general rule.

- (1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or value to the property through the rendition of services or performance of work with respect to such property.

- (2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.
- (3) The property must be resold, rented or leased in the same form in which it was purchased.

The Taxpayer states that it was in the business of renting the aircraft and therefore qualifies for the sales and use tax rental exemption on this airplane. This exemption requires compliance with three elements. To meet these requirements, the Taxpayer must be engaged in the reselling, renting, or leasing of such property in its regular course of business.

Review of the insurance policy maintained on the subject airplane indicates that the insurance policy covers “pleasure and business use.” This use is defined in the policy on page seven as follows:

“PLEASURE AND BUSINESS” means used in the business of the Insured, including personal and pleasure uses, *but excluding any operation for hire or reward*. Cost reimbursement shall be included within the definition of Pleasure and Business provided that such cost reimbursement is limited to:

- (1) Fuel, oil, lubricants, and other additives.
- (2) Expenses of the crew, including food, lodging, and ground transportation, but excluding salary or wages.
- (3) Hangar and tie-down costs away from the aircraft’s base of operation
- (4) Insurance obtained for the specific flight
- (5) Landing fees and similar assessments
- (6) Customs, foreign permit, and similar fees directly related to the flight
- (7) In flight food and beverages
- (8) An additional charge equal to 100 [percent] of the expenses listed in subparagraph (1) above (Emphasis Added)

If the Taxpayer were in the business of renting or leasing, the insurance policy would not exclude any use “for hire or reward.” In a true rental situation, the insurance policy would be specialized for the rental situation.

Based upon the evidence presented, the Department is unable to conclude that the Taxpayer was “occupationally engaged in reselling, renting or leasing such property in the regular course of his business.” 45 IAC 2.2-5-15(b)(2).

Finding

The Taxpayer's protest to the assessment of use tax on its airplane is respectfully denied.

II. Tax Administration- Ten Percent Negligence Penalty

Discussion

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department assessed the use tax liability against the Taxpayer because the Taxpayer ignored the tax laws of the Indiana and failed to follow the Department's instructions. The facts and circumstances of this case do not indicate that waiver of the negligence penalty would be appropriate.

Finding

The Taxpayer's protest is respectfully denied.